FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 27 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 103

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Petitioner,

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

ALEXANDER F. REICHMANN,
ANDREW J. DALLSTREAM,
Attorneys for Respondents.

HARRY B. HURD,
Of Counsel.

THE CHURCHILL-HILDRETH PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Statement	1
Question Presented	2
Summary of Argument	4
Argument	6
Respondents' Contentions	6
Petitioner's Contention	7
Section 807 Does Not Apply in the Case at Bar	9
Resort to Legislative History Precluded by the Unambiguous Language of Section 807	22
A Literal Reading of Section 807 Does Not Produce an Absurd Result	27
Every Intendment Is in Favor of Respondents' Construction of Section 807	33
Under Petitioner's Construction Section 807 Would Be Unconstitutional	36
Assuming Section 807 Is Both Applicable and Constitutional, Neither an Algebraic nor a Complicated Arithmetical Formula Is Justifiable	41
Respondents' Computation	41
Commissioner's Computation	43
Conclusion	46

CITATIONS.

Cases:

Amoskeag Trust Co. v. Trustees of Dartmouth College, 200 Atl. 786, 788 19

Clark v. United States, 27 Fed. (2d) 887, 888 (D. C., Mass.) 35

Commissioner of Internal Revenue v. Ames, 88 Fed. (2d) 338, 339 29

Commissioner of Internal Revenue v. Strauss, 77 Fed. (2d) 401, 405 (C. C. A. 7) 31

Commissioner of Internal Revenue v. Windrow, 89 Fed. (2d) 69, 71 (C. C. A. 5) 31

Converse v. Northern Pac. Ry. Co., 2 Fed. (2d) 959, 960 (C. C. A. 8) 33

Corbin v. Townshend, 103 Atl. 647, 649 ..... 16, 18

Crooks v. Harrelson, 282 U. S. 55 27

Edwards v. Slocum, 287 Fed. 651, 655 (C. C. A. 2) 34, 38, 42

Edwards v. Slocum, 264 U. S. 61 (affirming 287 Fed. (C. C. A. 2nd) 651) 7, 8, 9, 10, 11, 34, 40

Gould v. Gould, 245 U. S. 151, 153 34

Hamilton v. Rathbone, 175 U. S. 414 24

Hampton's Admrs. v. Hampton, 221 S. W. 496, 497 19

Harrison v. Barker Annuity Fund, 90 Fed. (2d) 286, 288 (C. C. A. 7) 34, 36

Heiner v. Donnan, 285 U. S. 312, 331 24

Helvering v. Northwestern Nat. Bank & Trust Co. of Minneapolis, 89 Fed. (2d) 553, 556 (C. C. A. 8) 32

Helvering v. O'Donnell, 94 Fed. (2d) 852, 854 (C. C. A. 2) 32

Home for Incurables v. Bruff, 153 Atl. 403, 410... 18
In re Bradley's Will, 101 N. W. 393, 394, 395..15, 18, 22
In re Holmes' Estate, 40 S. W. (2) (Mo.) 616, 618. 15
In re Roebling's Estate, 104 Atl. 295, 296..... 18
Nichols v. Leach, 50 Fed. (2d) 787, 792 (C. C. A. 1) 35
McDougald v. Low, 127 Pac. 1027, 1028.....16, 18
Old Colony R. Co. v. Commissioner, 284 U. S. 552, 560 24
Old Colony Trust Co. v. Commissioner, 279 U. S. 716, 730, 731 38
Old Colony Trust Co. v. Malley, 15 Fed. (2d) 105, 106 (D. C., Mass.)..... 35
Old Colony Trust Co. v. Smith, 165 N. E. 657, 658. 19
People v. McCormick, 327 Ill. 547, 561..... 12
People v. Pasfield, 284 Ill. 450, 453.....11, 14, 16, 18
People v. The Northern Trust Company, 289 Ill. 475, 477 .....11, 18
Plunkett v. Old Colony Trust Co., 124 N. E. 265, 267 19
Riggs v. del Drago, decided by U. S. Supreme Court Nov. 9, 1942.....14, 21, 22
State, ex rel. Smith v. Probate Court of Hennepin County, 166 N. W. 125..... 18
State of Tennessee v. Whitworth, 117 U. S. 129, 137 34
State v. First Calumet Trust & Savings Bank, 125 N. E. 200, 202 18
Thompson v. U. S., 246 U. S. 547, 551..... 24
Union & New Haven Trust Co. v. Eaton, 20 Fed. (2d) 419, 421 (D. C., Conn.)..... 34
United States v. Goldenberg, 168 U. S. 95, 102..... 24
United States v. Merriam, 263 U. S. 179, 187, 188.. 34

United States v. Pleasants, 305 U. S. 357 34
United States v. Proprietors of Social Law Library, 102 Fed. (2d) 481, 482 (C. C. A. 1) 34
United States v. Woodward, 256 U. S. 632, 635 20
Young Men's Christian Association v. Davis, 140 N. E. 114, 115 ..... 18, 19
Young Men's Christian Association v. Davis, 264 U. S. 47, 51 19

Texts:

61 C. J. 1626 33

Statutes:

Revenue Act of 1926, Section 303(a)(1) 30
Revenue Act of 1932, Section 807 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 103.

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Petitioner,

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

STATEMENT.

We wish at the outset to call the Court's attention again to what we said on pages 2 to 5, inclusive, of our brief in opposition to the Petition for a Writ of Certiorari, and to reiterate what we there said.

There is no way available to us, so far as we know, to test the accuracy of the statements made by the Petitioner

in reference to the number of pending cases claimed to raise the issue involved in this cause, and the aggregate of the tax liabilities therein. Whatever influence this may have had in granting the Writ of Certiorari, we are confident that it cannot affect this case adversely to Respondents. As we said, this case involves merely the construction of a statute, and the mere fact that there are a great number of cases pending, involving the amount of money suggested, cannot, and should not, in any manner affect the decision or determination of this Court in its construction of the statute.

On the contrary, as we pointed out, the fact that there are 2,000 taxpayers represented, presumably, by at least 2,000 lawyers all independently construing Section 807 the same as Respondents in the case at bar, is at least strongly persuasive proof not only that Section 807 is susceptible of this construction but also that this construction and interpretation is proper.

Question Presented.

The real question in this case is how, in the light of Section 303 (a) (3), as amended by Section 807, the amount of the Federal estate tax is to be ascertained?

Respondents urge that the correct Federal estate tax is $342,744.60, under Section 303 (a) (3), as amended by Section 807, properly construed and applied, leaving $119,069.43 as a residue going to charity.

On the other hand, Petitioner asserts that the Federal estate tax is $459,879.57, leaving $3,223.51 as a residue to charity, instead of $119,069.43.

It will be found that Petitioner's Brief resolves itself into two ultimate contentions:

The first contention, reiterated throughout his Brief (pp. 4, 6, 7, 11), to which we will more fully advert

later in our Brief, urges that though it be said that under the law of Illinois the Federal estate tax is payable out of the general or gross estate as an expense of administration, yet because of the fact that the payment of the tax out of the gross estate *reduces* the amount of the residuary bequest to charities, it follows that the Federal estate tax is payable out of the residuary bequest to charities, within the meaning of Section 807. This, we submit, is a complete *non sequitur*, as we will show, since the alleged reduction under Petitioner's construction of Section 807 is many times greater (that is, approximately 37 times greater) than the reduction which results from Respondents' construction of Section 807. The payment of the tax of $342,744.60 out of the gross estate, as an expense of administration, according to Respondents' computation, still leaves $119,069.43 as a residue to charities, while the tax of $459,879.57, computed on Petitioner's theory and construction of Section 807, leaves only $3,223.51 as a residue to charities.

The next and only other real contention of Petitioner is that, though Petitioner does not really contend that Section 807 is ambiguous, nevertheless, in the light of the so-called legislative history referred to by Petitioner in his brief, it must be held that the Federal estate tax is payable out of the residuary bequests to charities, though it is admitted that the Federal estate tax is, under the law of Illinois, payable out of the gross or general estate of the decedent, as an expense of administration.

We respectfully submit that Petitioner is, in fact, not seeking to enforce the unambiguous terms of Section 807, but, ignoring Section 807 and its plain meaning and intent, is seeking, to all intents and purposes, to supersede Section 807 by the so called legislative history, and accordingly to enforce the alleged legislative history, and not Section 807.

SUMMARY OF ARGUMENT.

Section 807 of the Revenue Act of 1932 Amending Section 303(a)(3) of the Revenue Act of 1926 Is Not Applicable in the Computation of Federal estate taxes on the Estate of Henry M. Wolf, and the Courts Below Were Correct in So Holding and Deciding.

1. Under controlling decisions of the Supreme Court of Illinois, the Federal estate tax is a paramount charge and expense of administration which is payable out of the general or gross estate of the decedent.

2. In Illinois, the Federal estate tax cannot be paid out of the residue of the decedent's estate bequeathed to charitable organizations within the meaning of Section 807, since such residue does not exist until Federal estate taxes, claims and expenses of administration have been paid from the general or gross estate of the decedent.

3. Since the language of Section 807 is clear and unambiguous and by its express terms excludes this estate, there is no need to resort to the legislative history of the Section to ascertain the intent of Congress.

4. A literal reading of Section 807 as contended for by respondents does not produce an absurd result.

5. Every intendment is in favor of respondents' construction of Section 807 and against the petitioner's construction of said Section because (a) the petitioner's construction, by ignoring the express words of the statute, would secure a larger Federal estate tax, (b) the petitioner's construction diminishes the bequests which the residuary charitable legatees, in whose favor taxing statutes are always liberally construed, would otherwise receive from the decedent's estate, (c) the petitioner's construction would result in the imposition of a tax upon a tax which would have to be computed by means of an algebraic or complicated arithmetical formula, neither of which is favored by the courts.

6. Furthermore, were it proper to resort to the legislative history of Section 807 to ascertain the intent of Congress, such legislative history is ambiguous and confusing and shows no intent on the part of Congress to impose a tax upon a tax and thereby to deprive the charitable organizations, which are the residuary legatees under this decedent's Will, of the full measure of the decedent's bounty.

Section 807, If Construed as Petitioner Contends, Would Be Unconstitutional Because It Would Require (a) That the Incidence of the Tax Must Be Regarded in the Levying of the Tax, and (b) That the Amount of the Tax Be Measured by the Tax Itself, or in Other Words That a Tax Be Imposed Upon a Tax.

If Section 807 Is Held to Apply to This Estate and to Be Constitutional, the Commissioner of Internal Revenue Is Not Entitled to Use an Algebraic or Complicated Arithmetical Formula to Compute the Amount of the Federal Estate Taxes on This Estate.

ARGUMENT.

The real questions presented in this case are simple and well defined.

Respondents' Contentions.

Respondents contend that Section 807, when construed, as it must be, in accordance with its plain and unambiguous language, has no application to the case at bar, because, under the law of Illinois, "the law of the jurisdiction under which the estate is administered", the Federal estate tax is payable *out of the general or gross estate* of the decedent, *as an expense of administration*, and is not "payable, in whole or in part, *out of the bequests, legacies or devises otherwise deductible under this paragraph*"—that is to say, in the instant case, are not payable *out of* Mr. Wolf's *residuary* bequests to charity.

The *residuary* bequests to charity are to

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

As the decision of the Circuit Court of Appeals in this case (R. 217, 220) shows, Petitioner conceded throughout, in the District Court and in the Circuit Court of Appeals (and, it will be seen, that he concedes this in his brief (pp. 7, 11, filed herein)), that the Federal estate tax under the law of Illinois, is a "*paramount charge and expense of administration which is payable out of the gross estate of decedent.*" This was specifically held by the District Court and the Circuit Court of Appeals, the latter saying:

> "Hence, under that jurisdiction (Illinois), such tax is not payable in whole or in part out of the residuary bequests to charity,"

as provided by Section 807.

Not being payable out of the residuary bequests to charity, the District Court and the Circuit Court of Appeals held that Section 807 has no application and that, therefore, the decision of this Court in *Edwards* v. *Slocum*, 264 U. S. 61 (affirming 287 Fed. (C. C. A. 2nd) 651), controls the determination of this case. In fact the Circuit Court of Appeals in this case expressly found that petitioner concedes that if respondents' construction of Section 807 be upheld, then the decision of *Edwards* v. *Slocum* is decisive of this case, *and Petitioner*, in his brief filed herein, page 5, *reaffirms this concession.*

As the Circuit Court of Appeals said:

> "Appellant (Petitioner) concedes that the facts in that case are substantially identical with those here, except as to the amounts involved, and were it not for Section 807, the decision of the Supreme Court in *Edwards* v. *Slocum, supra,* would be controlling here."

In fact, this was stipulated (R. 79) as follows:

> "It is conceded and stipulated that if plaintiffs' theory and construction of Section 807 of the Revenue Act of 1932 is sustained by the Court, then plaintiffs are entitled in this proceeding to recover the sum of $119,069.43, with interest as provided by law"

in accordance with the *Edwards* v. *Slocum* case.

Petitioner's Contention.

Petitioner contended, and still contends, throughout his brief (Br. 4, 6, 7, 11) that, though it be conceded, that, under Section 807, the Federal estate tax is a *charge and an expense of administration, payable out of the general or gross estate* by "the law of the jurisdiction under which the estate is administered", that is, by the law of Illinois, nevertheless, within the scope and meaning of that section, it is "payable, in whole or in part, out of the bequests" to charities, *because its payment operates to reduce the amount of the residue to charities.*

The utter fallacy and groundlessness of this contention lies in the fact, that, though its payment, under the law of Illinois as an expense of administration, does operate to reduce the amount of the residue going to charities, it does not operate to reduce the residue to nearly as great an amount, or extent, as petitioner seeks to do in this cause by his misapplication of Section 807. It is, therefore, clear that the *mere reduction* of the residue is not determinative of whether the tax is *payable out of* the residue.

Petitioner concedes and has stipulated, as we have said, that if Respondents' construction of Section 807 be sustained, then the case of *Edwards* v. *Slocum* controls the case at bar, and that Respondents, in accordance with that case, correctly computed the Federal estate tax at $342,744.60, leaving and preserving $119,069.43 as the residue going to charities.

On the other hand, the Commissioner, under his construction of Section 807, computed the Federal estate tax he seeks to impose at $459,879.57, leaving only $3,223.51 as a residue to charities, instead of $119,069.43.

And, as we will point out, in order to arrive at this, he resorts to methods and expedients condemned by *Edwards* v. *Slocum*, by imposing *a tax upon a tax*, and employing *algebraic or other complicated calculations* not within the cognizance of the average taxpayer, and frowned upon by this Court.

The Commissioner is not satisfied that the bequest to charities be "*reduced*" to the extent of $342,744.60, leaving $119,069.43 to charities, but seeks to absorb practically the whole of the residuary estate of $463,103.08, leaving only the neglible amount of $3,223.51 to charities, by imposing a tax upon a tax, and imposing an estate tax on the very amount of the estate tax assessed, thus augmenting the taxable estate, as Judge Hough said in the Slocum case "by a deliberate and designed encroachment upon charities."

It will thus be seen that the bequests to charities are not merely *reduced* by the amount of the Federal estate tax, but, in truth and in fact, by a fictitious amount resulting from the imposition of a Federal estate tax in part upon the very Federal estate tax imposed.

As we will show in our analysis of the Commissioner's computation, the Commissioner adopted as "a true tax", or as a "trial tax", the sum of $340,310.88, which is substantially the same as the correct tax of $342,744.60, found and contended for by Respondents. Not satisfied with this, however, he proceeds to impose a tax upon a tax, and arrives at $459,879.57, as the Federal estate tax, and then adds this amount to the net taxable estate, and computes the tax thereon, which results in the same figure, $459,879.57, just as was found and condemned by this Court in *Edwards* v. *Slocum*.

It is by this form of juggling of facts and figures that he practically dissipates the whole of the residuary estate left to charities, contrary to, and in violation of, the charitable disposition of the residue of the estate by the Will of the testator.

Section 807 Does Not Apply in the Computation of Federal Estate Taxes on This Estate, as Was Held and Decided by the District Court and the Circuit Court of Appeals.

The Revenue Act of 1916 provided that for the purpose of the tax, the value of the *net estate* should be determined by making certain deductions from the gross estate, such as "funeral expenses, administration expenses, claims against the estate, unpaid mortgages," etc.

Deductions for charitable bequests were first allowed in the Revenue Act of 1918 and have been allowed in every revenue act since that time, by providing that there shall *be deducted* from the gross estate in order

to arrive *at the net taxable estate* "the amount of all bequests, legacies, devises, or transfers" to charities.

It will be noted that no Revenue Act makes any distinction between specific bequests to charities or bequests of the residuary estate. The bequests of both are deductible and this was specifically held in *Edwards* v. *Slocum*, *supra*.

Section 807 of the Revenue Act of 1932 was adopted as an amendment to Section 303(a)(3) of the Revenue Act of 1926 and purports to impose a limitation on the amount of charitable deductions, as follows:

> "SEC. 807. Deductions of Bequests, etc., to Charity. Sections 303(a)(3) and 303 (b)(3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:
>
> > 'If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, *payable in whole or in part out of the bequests, legacies, or devises* otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.'" (C. 209, 47 Stat. 169; italics supplied.)

Section 807 does not, as was held by the Circuit Court of Appeals in this case, impose any tax, but merely purports to impose a limitation on the amount of the charitable deduction, but, it will be noted, only in the event and on the condition mentioned in Section 807, that, either under the will or by the law of the local jurisdiction the federal estate tax is "payable in whole or in part out of the bequests, legacies or devises" to charities, and then "the amount deductible under this paragraph shall be the amount of such bequests, legacies or devises reduced by the amount of such taxes."

It is manifest that, in order to make this Section 807 applicable, it must appear that either by the will or the law of the local jurisdiction, the Federal estate tax is *payable out* of the bequests to charities and it makes no difference whatsoever whether the bequests be specific bequests to charities or a bequest of the residuary estate. If, therefore, the Federal estate tax is not *payable out* of the bequests to charities, either specific or residuary, but on the contrary, either by the terms of the will or the local law, is payable as an expense of administration *out of* the gross estate, then Section 807 has no application.

In such a case the whole of the specific bequests to charities, as well as the whole of the residuary estate bequeathed to charities, are deductible from the gross estate in order to arrive at the net taxable estate, as was held in *Edwards* v. *Slocum, supra.*

Since, in the instant case, the will makes no provision for the payment of federal estate taxes, *it is obvious that the laws of the State of Illinois must determine how and out of what Federal estate taxes shall be paid.*

The respondents maintain, and the District Court and the Circuit Court of Appeals held, that under the laws of the State of Illinois the Federal estate tax is an expense of administration and is therefore, under the Illinois law, *payable out of the general or gross estate* of the decedent, and hence is *not "payable in whole or in part out of"* the decedent's *residuary* bequests to charity within the meaning of Section 807 of the Revenue Act of 1932. *People* v. *The Northern Trust Company*, 289 Ill. 475, 477; *People* v. *Pasfield*, 284 Ill. 450, 453.

The petitioner concedes that in Illinois the federal estate tax is an expense of administration, but insists, as we have said, that because payment of such taxes *out* of the general estate of the decedent operates to *reduce* the residuary estate bequeathed to charities, the Federal estate tax

is therefore in effect payable out of the residue of the decedent's estate within the meaning and intent of the statute. This contention of the petitioner is not supported either by principle or by authority, and we are confident that it will not appeal to this Court any more than it did to the courts below.

In *People* v. *McCormick*, 327 Ill. 547, the Supreme Court of Illinois said (p. 561):

> "In *People* v. *Pasfield*, 284 Ill. 450, and *People* v. *Northern Trust Co.*, 289 id. 475, this court considered the question whether the Federal estate tax should be deducted before computing the State tax, *and it was there held that the Federal tax was an expense of administration* and should be deducted as such before computing the State tax. * * * *A Federal estate tax has been declared by this court in cases referred to, to be a charge of administration.*"*

If the Federal estate tax is not by the law of Illinois *payable out of the bequests* to charities, but on the contrary is *payable out of the general or gross estate of the decedent as an expense of administration*, Section 807 has no application to this estate.

It will be noted that the language of Section 807 is imperative. It says that in order to make the statute applicable the Federal estate tax must, by the laws of the State of Illinois, be "payable * * * out of the bequests" to charities. When it is said that the tax is payable by the terms of a will or by the mandate of the law, it means that it is to be paid, or shall be paid, or is required to be paid and not merely that the effect of payment might result *in the reduction* of a residuary charitable bequest. If by the terms or direction of a will or by the mandate of the law it is said that a tax is to be paid *out of* the *gross or general estate* it cannot by any process of

* In general, italics in quotations are supplied.

construction be said to be payable *out of* the *residuary bequests*, nor if it is payable *out of* the *residuary bequests* can it be said that it is payable *out of the gross or general estate* of the decedent.

A *residue*, we say, is only what remains in an estate after the payment of all claims, expenses of administration, including Federal and State taxes and all general and specific legacies. Taxes cannot be, and are not payable *out of* something that does not exist until after such payment. Before there can be a residue, the Federal estate taxes with all other items must first be paid, and then only is there a *residue*. It follows, therefore, that the Federal estate taxes are paid *out of* the *gross estate* before the residue is created. The bequest to the charities is the *residue* of the decedent's estate, and nothing is paid *out of* this residue because all payments have been previously made *out of* the gross or general estate of the decedent. It is no answer for the petitioner to say that, whether the Federal estate tax be paid out of the general estate or out of the bequests of the residue to charities, the result is the same, in that in each instance the payment reduces the amount actually going to charities. This is *not* what Congress has said in Section 807. The question is, what does the amendment in plain and unequivocal terms say? It is no answer to say that Congress *intended* it to mean something else.

We insist that Section 807 is susceptible only of the construction that we have placed upon it and that there is no room for speculation as to the intention of Congress other than as disclosed in the plain terms and meaning of the language employed. It would have been a simple thing for the Congress to have used language in Section 807 that would have clearly and unquestionably accomplished what the petitioner is seeking to do in the instant case. *This, however, it did not do.*

Under the law of Illinois, an executor coming into assets

of an estate is required, before final distribution and the closing of the estate, to pay, out of the funds of the estate in his hands all claims, general and specific legacies, the actual costs of administration and also the Federal estate tax, which by the law of Illinois is held to be an expense of administration. It is only after this has been done that there can be a residue for the executor to turn over to the residuary legatees. It is absolutely settled that under the Federal Estate Tax Law, the executor is required to pay this tax before distribution. This was decided by this Court in *Riggs* v. *del Drago* on November 9, 1942, and previously in many other cases.

By the law of Illinois, the executor is not required to set aside the residue of the estate going to the residuary beneficiaries and thereupon pay the Federal estate taxes therefrom. On the contrary, the executor is required to pay Federal estate taxes from the gross or general estate of the decedent the same as he pays other expenses of administration, and then and then only, is he required or permitted to make distribution to the residuary legatees.

In *People* v. *Pasfield*, 284 Ill. 450, the Supreme Court of Illinois, in speaking of the Federal estate tax, said (p. 454):

> "As the duty is made payable by the executor or administrator to the collector or deputy collector by the express provisions of the statute, the duty is an expense or a charge *against the estate* of the decedent, and not an express charge against the shares of the legatees or distributees of the decedent. *The legatees and distributees cannot in any sense be held to have 'received' any part of the duty that is paid to the government by the executor or trustee or administrator as such estate tax*, and there is no language in the act that will permit a construction *that the duty is levied*

upon each share of the legatees or distributees of the decedent, as was given the federal act of 1898 by the court in *Knowlton* v. *Moore, supra.*"

In the absence of a specific provision of a will or the mandate of the law, it can never be said that the Federal estate tax is payable *out of* the residuary estate, whether bequeathed to charities or otherwise. The payment of the tax may operate *to reduce* the amount of the residuary estate, *but this is not equivalent to saying,* either directly or indirectly, that the tax is payable or is paid *out of* the residuary estate, and this for a very simple and conclusive reason. This reason is that the amount of money represented by the tax to which the net or taxable estate has been subjected, the payment of which has to that extent reduced the general estate, *has never been a part of the residuary bequests or estate.* As was said in *In re Holmes' Estate,* 40 S. W. (2) (Mo.) 616, at pages 618:

"The residuary estate is that which remains after all obligations constituting charges against the estate and all specific legacies and bequests have been met and discharged."

This principle is most clearly and concisely stated by the Supreme Court of Wisconsin in *In re Bradley's Will,* 101 N. W. 393, where the Court said (pp. 394, 395):

"The reasoning of these English cases is to the effect that by the use of the term 'residue' a testator charges *upon the general estate* all debts, legacies and other burdens; *that no residue exists until such burdens have been paid.* In this view, it is *a solecism* to speak of discharging a debt or other charge *out of the residue,* or *by application* of any particular share of the residue. *Before the residue exists* for assignment or apportionment, all debts and burdens have necessarily and by very force of the terminology been paid, and do not exist. * * * By the payment of such burdens *out of the general estate,* the *residuary leg-*

acies are not abated. *True, the residue is lessened, but it is only the residue,* whatever it may be *which is by the will given to these legatees.*"

This has also been clearly recognized by the Supreme Court of Illinois in *People* v. *Pasfield,* 284 Ill. 450, 454, *supra,* p. 14.

In *Corbin* v. *Townshend,* 103 Atl. 647, the Supreme Court of Connecticut said (p. 649):

"The federal act of 1916 imposes a tax *payable out of the estate before distribution,* thus differing from the federal inheritance tax of 1908, payable by the individual beneficiaries. It is not a tax upon specific legacies, *nor upon residuary legatees. It is taken from the net estate 'before the distributive shares are determined rather than off the distributive shares.'* Its payment diminishes *pro tanto* the share of each beneficiary. *The executor or administrator must pay the tax out of the estate before the shares of the legatees are ascertained.* It is an obligation against the estate and payable like any expense which falls under the head of administration expenses. *The tax paid is no part of the estate at the time of distribution; it has passed from the estate, and the share of the beneficiaries is diminished by just so much.*

"• • • *The payment of the federal tax is an expense of the estate, as much so as any expense of administration. Until this charge is paid the executor cannot receive his discharge, nor can the beneficiary receive his share.*"

In *McDougald* v. *Low,* 127 Pac. 1027, 1028, the Supreme Court of California said:

"'Respondents in their brief correctly state that: "The legatees at bar take by decedent's will the residue; *the residue is what remains after paying the legacies of the will and the debts and expenses of administration.*" That respondents' conception of what is meant by the residue in the law of wills and administration is correct is amply supported by the following authorities.'" (Citing cases.)

In fact petitioner has admitted that this position is well taken. In his brief in the Circuit Court of Appeals, page 10, he said:

> "Under these decisions (*People* v. *Northern Trust Company*, 289 Ill. 475; and *People* v. *Pasfield*, 284 Ill. 450), it is, we think, obvious, First, That there can be no residuary estate until the federal estate tax has been paid, and Second, That since the federal estate tax is a paramount charge or expense of administration it must be paid out of assets of the estate, which *otherwise* would have constituted decedent's residuary estate."

If the Federal estate tax is payable out of the assets which would *otherwise* constitute decedent's residuary estate, it is manifestly impossible that the Federal estate tax be payable *out of* the residuary estate of the decedent.

In note 5, on page 12 of Petitioner's Brief herein, it is said:

> "Indeed, the rule in most states is that in the absence of a contrary direction by the testator the weight of the tax falls upon the residuary legatees or devisees."

And thereupon, a number of cases are cited.

An examination of these cases shows that none of them involved a determination of the amount of the Federal estate tax, or the method of its computation or determination. Certain of them hold that the Federal estate tax is a charge against the gross estate and an expense of administration payable out of the same, and recognize that this operates to lessen or reduce the residue. This is, of course, self-evident. None of them hold, however, that the payment of the Federal estate tax out of the gross estate, as a charge and expense of administration, is tantamount or equivalent to saying that the Federal estate tax is payable out of the residue, whether bequeathed to charities, within the language or meaning of Section 807, or otherwise.

The note itself recognizes that in certain of the States a different rule prevails, as in Florida and Kentucky, and in Pennsylvania and New York.

Before distinguishing these cases we wish to point out that all of the cases in which the term "residue" is discussed are not easily reconciled because the courts have not always felt it necessary or important to define the term with sufficient clarity to enable the reader to know whether or not the court had in mind the amount of the testator's estate remaining after the payment of all specified bequests, claims and expenses of administration or the amount remaining after the payment of all specified bequests merely but before the payment of any claims or administration expenses.

What is meant by the term "residue" would seem to be a matter for determination by the State courts. The better reasoned decisions fall into two fairly definite categories. *The weight of authority holds that the residue of an estate is only that which remains after all debts, expenses, charges of administration and legacies, including taxes, have been paid.* This is the law in Illinois (*People* v. *The Northern Trust Company*, 289 Ill. 475, 477; *People* v. *Pasfield*, 284 Ill. 450, 454); in Wisconsin (*In re Bradley's Will*, 101 N. W. 393, 394, 395); in Indiana (*State* v. *First Calumet Trust & Savings Bank*, 125 N. E. 200, 202); in Minnesota (*State, ex rel. Smith* v. *Probate Court of Hennepin County*, 166 N. W. 125); in Connecticut (*Corbin* v. *Townshend*, 103 Atl. 647, 649); in New Jersey (*In re Roebling's Estate*, 104 Atl. 295, 296); in Maryland (*Home for Incurables* v. *Bruff*, 153 Atl. 403, 410); and in California (*McDougald* v. *Low*, 127 Pac. 1027, 1028). It appears also to be the law in Ohio (*Young Men's Christian Association* v. *Davis*, 140 N. E. 114, 115).

In other jurisdictions, the residue is considered as formed at the time of the decease of the testator and the residuary legatees take the residuary estate, subject to or charged with the payment of claims and administration

expenses. This is the law in Massachusetts (*Old Colony Trust Co.* v. *Smith*, 165 N. E. 657, 658; *Plunkett* v. *Old Colony Trust Co.*, 124 N. E. 265, 267). It is probably the law in Kentucky (*Hampton's Admrs.* v. *Hampton*, 221 S. W. 496, 497); and in New Hampshire (*Amoskeag Trust Co.* v. *Trustees of Dartmouth College*, 200 Atl. 786, 788).

Neither the authorities cited by petitioner, nor any other authorities with which we are familiar, hold that in a jurisdiction such as Illinois, where the Federal estate tax is an expense of administration and where the residuary legatees do not take the residuary estate subject to administration expenses, the Federal estate tax is payable out of the decedent's residuary estate. The case of *Young Men's Christian Association* v. *Davis*, 140 N. E. 114, 115, cited by the petitioner at page 12 of his brief, supports the respondents' and not the petitioner's position. When the case was before the Supreme Court of Ohio (140 N. E. 114), that Court said (p. 115):

> "This fact affords a clear and conclusive presumption that all charges imposed by the law or by the testator should be paid *out of the estate* before any rights should ripen in behalf of the residuary devisees or legatees under this item. This view supports the undoubted intention of the testator in the making of the will in all its various provisions, as well as the plain provisions of the federal statute. It is unnecessary to refer to this statute further than to quote a few lines from section 408 (40 Stat. 1100 (U. S. Comp. St. Ann. Supp. 1919, § 6336-3/4i)):
>
> " 'It being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid *out of the estate* before its distribution.' "

The above quotation clearly indicates that the Federal estate tax is to be paid out of the *general* rather than out of the *residuary* estate of the decedent. This Court, in affirming *Young Men's Christian Association* v. *Davis*, 264

U. S. 47, 51, confirmed this opinion when, speaking through Mr. Chief Justice Taft, it said:

> "It was wholly within the power of the testatrix to exempt her altruistic gifts from payment of the tax by specific direction to her executor if she chose. It must be presumed, when she failed to exercise the power, that she intended the incidence of the tax to be where otherwise by law it must be, and therefore that it was her purpose that *her residuary legatees were to receive all that was left after paying all charges, including this tax, out of her estate.* The donees of the altruistic gifts profit much by the deduction made under subdivision (3), even though they do receive less by the amount of this tax. Had subdivision (3) not been in the statute, the tax would have been much heavier, measured by a higher percentage of the value of the whole estate including their gifts. It is hardly true to say that under the judgment of Ohio courts these residuary gifts are taxed. The gifts are and were intended by the testator to be indefinite in amount, and to be what was left after paying funeral expenses, attorney's fees, executor's compensation, debts of the decedent, and taxes. *These donees do not pay the taxes, any more than they pay the funeral expenses, the lawyers, the executors, and the testator's debts.*"

It is clear that if the residuary donees do *not* pay taxes and administration expenses, such taxes and administration expenses could not be payable *out of* the bequests to the residuary donees.

It will be noted that the *Davis* case, and that of *Edwards* v. *Slocum*, were both decided on the same day, February 18, 1924.

In *United States* v. *Woodward*, 256 U. S. 632, 635, this Court, in an unanimous opinion, speaking through Mr. Justice Van Devanter, said:

> "It (the Federal tax) does not segregate any part of the estate from the rest and keep it from passing to the administrator or executor for purposes of ad-

ministration as counsel contend, *but is made a general charge on the gross estate* and is to be paid in money out of any available funds or if there be none, by converting other property into money for the purpose."

We believe it is plain from the foregoing discussion that, in a jurisdiction such as Illinois, Federal estate taxes could not be payable *out of* the residuary estate of a decedent. We submit therefore that Section 807 of the Revenue Act of 1932 cannot possibly be applied to this estate.

This Court, in *Riggs* v. *del Drago, et al.*, decided November 9, 1942, it seems to us, has clearly settled this question, saying, among other things:

"We are of opinion that Congress intended that the Federal Estate Tax should *be paid out of the estate as a whole* and that the applicable state law as to the devolution of property at death should govern the distribution of the remainder and the ultimate impact of the federal tax."

Again, this Court said that, pursuant to Section 826 (b), and quoting therefrom, it is "the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be *paid out of the estate before its distribution.*"

And, commenting upon this quoted provision of Section 826 (b), this Court said:

"Section 826 (b) does not command that the tax is a non-transferable charge *on the residuary estate;* to read the phrase 'the tax shall be paid out of the estate' as meaning 'the tax shall be paid out of the *residuary* estate' is to distort the plain language of the section and to create *an obvious fallacy.* For in some estates *there may be no residue* or else *one too small* to satisfy the tax."

This Court then says that, in such event, "resort must then be had to state law to determine whether personalty

or realty, or general, demonstrative or special legacies abate first," since all the Courts hold, that the entire Federal estate tax must be paid out of the corpus of the estate.

The foregoing is the exact situation in the case at bar, under the settled law of Illinois, holding that the Federal estate tax is payable out of the general or gross estate *as an expense of administration*, and, therefore, manifestly is not payable out of the residue or proportionately by the distributees or beneficiaries of the estate, as provided for in Section 124 of the New York Decedent Estate Law, under consideration in the *del Drago* case. There is no statute in Illinois similar to Section 124.

In harmony with this Court's statement in the *del Drago* case, that the contention that the tax is payable out of the residuary estate is *"an obvious fallacy,"* the Supreme Court of Wisconsin in *In re Bradley's Will* (*supra*, p. 15), said: "It is *a solecism* to speak of discharging a debt or other charge *out of the residue*, or by application of any particular share of the residue."

The same in legal effect are the holdings in the cases previously cited in our brief (pp. 14 to 16, 19 and 20).

It Is Respondents' Position That the Language of Section 807 Is So Clear and Unambiguous as to Preclude Resort to Legislative History.

Petitioner urges that the legislative history he refers to in his brief (namely, the House and Senate Reports, Appendix B, pages 21, 22, 23 of the brief) shows that Congress intended, by the enactment of Section 807, to overcome the decision of *Edwards* v. *Slocum*, and to render that decision inapplicable in the future, in situations presented in the case at bar.

In fact, it is manifest that Petitioner's real and ultimate contention is based upon the so-called legislative history

of Section 807, and not on the plain and unambiguous language of that section.

The record and opinion of the Circuit Court of Appeals show that Petitioner in the District Court and in his brief in the Circuit Court of Appeals, admitted, to all intents and purposes, that Section 807 is not ambiguous.

As the Circuit Court of Appeals says, counsel for Petitioner in the District Court said (Rec. 201):

> "*The Government does not at all contend that this statute (Sec. 807) is ambiguous.* We simply want it clear that if the Court finds it ambiguous, the Court may examine anything it desires."

Neither the District Court, nor the Circuit Court of Appeals, found Section 807 ambiguous, but, on the contrary, found it unambiguous, and held that, under this section, pursuant to the laws of Illinois, "the law of the jurisdiction under which the estate is administered", the Federal estate tax *is not payable* out of the bequests to charity, whether residuary or specific, but is specifically *payable out of the gross* or *general estate.*

Furthermore, the Circuit Court of Appeals specifically found that petitioner conceded, in both the District Court and the Circuit Court of Appeals, that under the law of Illinois, the Federal estate tax is a paramount charge and expense of administration against the estate.

And, continuing, the Court of Appeals said that Petitioner "*seeks to parry* the force of the clear language of the section *by resort to legislative history*, in order to arrive at what he claims to be the true policy and intent of Congress."

As the Circuit Court of Appeals said:

> "It is conceded that prior to the enactment of mandatory Section 807 of the Act of 1932, there was no federal enactment which authorized the deduction of a federal estate tax from residuary bequests to charities

in fixing the net taxable estate. *Edwards* v. *Slocum*, 264 U. S. 61." (Rec. 219.)

And, immediately continuing, the Court said:

"Appellant concedes that the facts in that case (*Edwards* v. *Slocum*) are substantially identical with those here, except as to the amounts involved, and were it not for Section 807, the decision of the Supreme Court in *Edwards* v. *Slocum*, *supra*, would be controlling here."

Since the inception of our judicial system, it has been uniformly held that where the Congress has enacted a statute, the language of which is clear and unambiguous, the Congress will be presumed to have intended to say what it did say, and that it is entirely improper to resort to the legislative history of the statute or to committee reports or debates to show any different intent. *Hamilton* v. *Rathbone*, 175 U. S. 414, *Thompson* v. *U. S.*, 246 U. S. 547, 551. This salutary rule is peculiarly applicable where, as here, a tax statute is involved. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 560. It is not, of course, the function of the courts to legislate, and we are confident that this Court will not wish to do so. *The court cannot enact a law under the pretense of construing one.* *Heiner* v. *Donnan*, 285 U. S. 312, 331. It seems hardly necessary to point out that if this court were to disregard the plain and unambiguous language of Section 807 of the Revenue Act of 1932, it would be usurping what is properly a function of the Congress. If the Congress intended to do what the petitioner now asserts that it did do, appropriate language was readily available to that end, as the Circuit Court of Appeals said in the case at bar.

In *United States* v. *Goldenberg*, 168 U. S. 95, 102, the Supreme Court of the United States, in an unanimous opinion, speaking through Mr. Justice Brewer, said:

"The primary and general rule of statutory con-

struction is that *the intent of the lawmaker is to be found in the language that he has used.* He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.* In the case at bar the omission to make specific provision for the time of payment does not offend the moral sense. *Holy Trinity Church* v. *U. S.*, 143 U. S. 457, 12 Sup. Ct. 511. It involves no injustice, oppression, or absurdity."

It is fundamental that legislative intent must be determined from the language employed. If the language employed be plain and unmistakable, then the intent it reflects controls, whatever the legislative intent may have been outside of the enactment. It is the function of the legislature to translate its intent into its enactments. If it has failed so to do, then whatever the legislative intent may have been, it is nugatory, and cannot operate to change or modify the plain language of its enactment.

It would have been a simple matter for the Congress to have enacted a statute which would have operated to limit deductions where the decedent has bequeathed the residue of his estate to charity and where under the laws of the state of decedent's residence Federal estate taxes are paid out of the general estate of the decedent as an expense of administration and not out of decedent's residuary estate. *This the Congress did not do.*

There are only two sources from which the Federal estate tax can be made payable, either by the will or by the

law of the jurisdiction of administration; one is out of the total or gross estate; the other is out of other general bequests, including bequests to charities, either specific or residuary. Section 807 by its plain and direct terms extends only to the one alternative, namely, where by the will or by the law of jurisdiction of administration, the tax is payable out of bequests to charities, either specific or residuary, and it is only to this alternative that Section 807 can, we submit, be held to apply, as was pointed out by the Circuit Court of Appeals in the case at bar. If Congress had in mind also the other alternative, the Act would have been made to read, that, if by the will, or by the law of the jurisdiction of administration the Federal estate tax is payable either out of the general or gross estate or out of the bequests to charities, either specific or residuary, then the reduction in the amount of the exemption should be made.

Appropriate language to this end and to reach both alternatives was readily available to it, which, however, it did not employ.

We see no escape from this conclusion. It brings into play the old maxim: "*Expressio unius est exclusio alterius.*"

Despite the unwillingness of Congress to enact a statute which could have accomplished the result contended for by petitioner, the petitioner now asks this Court to ignore the clear and unmistakable language of Section 807 of the Revenue Act of 1932 and to construe that section so as to deprive charitable organizations for whom the Congress and the courts have always, and properly so, entertained the utmost solicitude, of their just measure of the testator's bounty. We cannot believe that this Court will indulge the petitioner in this wholly untenable position.

A literal reading of Section 807 as contended for by respondents does not produce an absurd result.

There is no merit in the contention of the petitioner that if Section 807 were to be given a literal reading by this court an absurd result would ensue in the instant case.

The principles which should guide courts in the construction of taxing statutes are clearly and succinctly stated in the unanimous opinion of this Court in *Crooks* v. *Harrelson*, 282 U. S. 55, where the Court was called upon to construe Section 402 of the Federal Estate Tax Act of 1918. In discussing the problem presented, the Court speaking through Mr. Justice Sutherland said (pp. 59-61):

> "It is urged, however, that, if the literal meaning of the statute be as indicated above, that meaning should be rejected as leading to absurd results, and a construction adopted in harmony with what is thought to be the spirit and purpose of the act in order to give effect to the intent of Congress. The principle sought to be applied is that followed by this court in *Holy Trinity Church* v. *United States*, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226; but a consideration of what is there said will disclose that the principle is to be applied to override the literal terms of a statute only under rare and exceptional circumstances. *The illustrative cases cited in the opinion demonstrate that, to justify a departure from the letter of the law upon that ground, the absurdity must be so gross as to shock the general moral or common sense.* • • •
>
> "Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of a statute a meaning which literally they did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter. *Monson* v.

Chester, 22 Pick. (Mass.) 385, 387. It is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. Laws enacted with good intention, when put to the test, frequently, and to the surprise of the lawmaker himself, turn out to be mischievous, absurd, or otherwise objectionable. *But in such case the remedy lies with the lawmaking authority, and not with the courts.* • • •

"Finally, the fact must not be overlooked that we are here concerned with a taxing act, with regard to which the general rule requiring adherence to the letter applies with peculiar strictness."

Moreover, a literal reading of Section 807 does *not* lead to absurd results. Quite the contrary, Section 807 has a perfectly proper scope and its expressed terms so indicate. Section 807 refers not only to Federal estate taxes, but to all kinds of succession, legacy and inheritance taxes imposed by the various states. In many jurisdictions these taxes are paid by the various beneficiaries under the decedent's will out of their respective bequests. Testators often believe that each legatee should bear a proportion of all taxes imposed upon the estate and consequently, in many wills provisions are incorporated to this effect. In such cases it is obvious that Federal estate taxes would be payable out of amounts bequeathed. In some jurisdictions, the residuary legatees take the decedent's residuary estate subject to the payment of all taxes, claims and expenses of administration. In those jurisdictions a residuary bequest is therefore equivalent to a specific bequest. It is conceded by the petitioner that Section 807 is entirely unambiguous in regard to specific bequests. These are all instances in which Section 807 might have a proper scope and where its application would not lead to absurd results.

Petitioner says (Br. 10):

"Thus, under the prior law as interpreted by *Ed-*

> *wards* v. *Slocum*, the testator was provided with a facile means of estate tax avoidance. He could carve up his estate in such manner as to leave a residue roughly equal to the anticipated tax and then make the meaningless bequest of the residue to charity. The charity, of course, would receive nothing, but the estate would obtain the windfall of a substantial charitable deduction. Section 807 was enacted to prevent such avoidance in the future."

The statement that Section 807 was enacted to prevent such avoidance begs the whole question in this case. The question is whether Section 807, in the light of its plain and unambiguous language, manifests this purpose and intention. We have endeavored to show that Section 807 manifests no such intention and is not susceptible of such construction, but, on the contrary, is limited in its application to the single instance in which, either under the Will or the law of the local jurisdiction, the tax is *payable out of* the charitable bequests, whether specific or residual. This, we have shown, has no application to the instant case. This is simply another effort, in different form, to read the alleged legislative history into Section 807, contrary to its explicit and limited terms.

The Circuit Court of Appeals in the case at bar specifically held that "a literal reading of Section 807 does not produce an absurd result". Citing *Commissioner* v. *Ames*, 88 Fed. (2d) 338 (C. C. A. 7th).

The Circuit Court of Appeals of the 7th Circuit and other courts have found no absurdity whatsoever in a precisely parallel situation.

Thus, in the Ames case, *supra*, where the decedent's estate consisted solely of insurance payable to named beneficiaries, which is subject to Federal estate tax in excess of $40,000, the court in determining the amount of the Federal estate tax allowed deductions for claims against

the estate, although it is perfectly obvious that since the insurance is payable to named beneficiaries it is not subject to the claims of creditors, *and that their claims will never in fact be paid.* Section 303(a)(1) of the Revenue Act of 1926, as amended (now Section 812 (b) of the Internal Revenue Code) provides:

> "For the purpose of the tax the value of the net estate shall be determined * * * by deducting from the value of the gross estate—such amounts * * * *for claims against the estate* * * * *as are allowed by the laws of the jurisdiction* * * * *under which the estate is being administered* * * *."

In construing this section, and in holding that it must be given effect in accordance with its literal terms the Court said (p. 339):

> "The Commissioner contends that the gross estate here involved being one that is not burdened with the debts of the deceased, no reason appears for offsetting such claims before reaching a net estate on which to compute tax. He assumes that the tax is a succession excise and reasons therefrom that the property which does not pass (that part used for debts, etc.) having been relieved from such tax, it would be wholly absurd to construe the statute in the manner contended for by respondent, as such construction would tend to defeat its very purpose. His reasoning is not without merit, but we think the answer lies in the statute itself. *The matter of deductions is wholly within the power of the legislative department, and when Congress has specified in such plain language as above indicated what sums are to be deducted from the gross estate, little is left for the courts by way of construction. We think the language plain and unambiguous, and it is not within our province to say whether founded on reason or not.*
>
> *"When Congress said that in fixing the net estate 'claims against the estate' were to be deducted, if they had wished to make an exception and limit such deductions by excluding such portions of the estate as*

passed unburdened of claims under the law of the state of domicile, it would have required only the simplest kind of language to have done so. They may not have had in mind a fact situation such as is here present, and they may have wished that the applicable deductions be not applied to such an estate as the one under consideration, but for us to so assume would be pure speculation.

"Petitioner further asserts that the language 'shall be determined' is merely directory and that other sections of the act evidence the intention of Congress to provide such deductions as here involved only if the gross estate is chargeable with such claims. We find nothing in the act itself evidencing a legislative intention contrary to that of the plain language of section 303, (a) (1), *supra*. Beyond this we are not permitted to go. *U. S.* v. *Goldenberg*, 168 U. S. 95, 18 S. Ct. 3, 42 L. Ed. 394."

To the same effect is *Commissioner of Internal Revenue* v. *Strauss*, 77 Fed. (2d) 401, 405 (C. C. A. 7).

The conclusion reached by the Circuit Court of Appeals, that there is nothing absurd in permitting deductions for claims that will never be paid, is supported by decisions of the Circuit Courts of Appeal for the First, Second, Fifth and Eighth Circuits.

In *Commissioner of Internal Revenue* v. *Windrow*, 89 Fed. (2d) 69 (C. C. A. 5), the court said (p. 71):

"By the express terms of the statute laying it, the tax in question here is upon the transfer of a net estate ascertained as the act prescribes by taking the deductions allowed, from the statutory gross estate, and not on every value or property that may be transferred by death. If there is no net estate as the statute defines it, there is no tax. The nature of the tax is stated, and the statute literally applied touching a deduction for a charitable bequest in *Edwards* v. *Slocum*, 264 U. S. 61, 44 S. Ct. 293, 68 L. Ed. 564. Every other deduction ought to have the full allowance that the statute provides. *Courts and administrative agencies*

> *are bound to enforce the plain words of the statute, although there may be reason to think, in view of the general legislative purpose that some other provision would have met with favor if the Legislature had called it to mind.* We cannot, if we would, amend the statute to read *'The value* of claims against the estate,' or 'Claims against the estate *so far as paid.'* Congress did limit claims in respect of their allowance in law; it did not limit them in respect of their payment or payability."

If the court may not by construction change the phrase "*such amounts as are allowed by the laws* of the jurisdiction under which the estate is being administered" to "*the value* of claims against the estate" or "claims against the estate *so far as paid*" certainly the Court may not by construction change the words "*payable in whole or in part out of the bequests*" to "payments which *reduce* the bequests." To the same effect are *Helvering* v. *O'Donnell*, 94 Fed. (2d) 852, 854 (C. C. A. 2), and *Helvering* v. *Northwestern Nat. Bank & Trust Co. of Minneapolis*, 89 Fed. (2d) 553, 556 (C. C. A. 8).

It follows inexorably from the foregoing that Congress in allowing deductions in the computation of Federal estate taxes is not concerned with what finally happens to the decedent's estate. *Surely, if there be nothing absurd in allowing deductions for claims which will never be paid, there likewise can be nothing absurd in permitting charitable deductions in an amount that charities may not ultimately receive from the estate of the decedent.*

Whatever may be said about the legislative history of Section 807, its words neither directly nor indirectly provide that the Federal estate tax must be added to the otherwise net taxable estate of the decedent before computing the amount of the residue bequeathed to charities.

Every intendment is in favor of respondents' construction of Section 807 of the Revenue Act of 1932 and against the petitioner's construction of said Section because (a) the petitioner's construction, by ignoring the express words of the statute, would secure a larger Federal estate tax, (b) the petitioner's construction diminishes the bequests which the residuary charitable legatees, in whose favor taxing statutes are always liberally construed, would otherwise receive from the decedent's estate, (c) the petitioner's construction would result in the imposition of a tax upon a tax which would have to be computed by means of an algebraic or complicated arithmetical formula, neither of which is favored by the courts.

In support of the many cogent reasons why the construction of Section 807, urged by the respondents should be adopted by this Court, we wish to call attention to certain well established applicable rules of interpretation and construction.

(a) *It is a universal rule that tax-imposing statutes are to be construed strictly against the taxing power and in favor of the taxpayer.*

This is so fundamental that no extended citations of the authorities can be necessary.

And in 61 C. J. 1626, it is said:

> "*Where there is a doubt* as to the construction of a statute imposing an inheritance or transfer tax, it should be resolved in favor of the person taxed, and the statute construed strictly against the taxing power. *A doubt as to the taxability of a fund should be resolved against the Government.*"

In *Converse* v. *Northern Pac. Ry. Co.*, 2 Fed. (2d) 959, (C. C. A. 8), it was said (p. 960):

> "* * * if the Legislature intends to tax him, it

shall at least be required to say so, *in clear and unmistakable terms.*"

To the same effect are:

Gould v. *Gould*, 245 U. S. 151, 153; and

United States v. *Merriam*, 263 U. S. 179, 187, 188.

(b) *The law exempting charitable bequests should be liberally construed to favor and encourage the same.*

Harrison v. *Barker Annuity Fund*, 90 Fed. (2d) 286, 288.

United States v. *Pleasants*, 305 U. S. 357.

United States v. *Proprietors of Social Law Library*, 102 Fed. (2d) 481, 482 (C. C. A. 1).

Union & New Haven Trust Co. v. *Eaton*, 20 Fed. (2d) 419, 421 (D. C., Conn.).

(c) *Construction is against double taxation.*

In *State of Tennessee* v. *Whitworth*, 117 U. S. 129, 137, it was said:

"Double taxation is, however, never to be presumed. * * * All presumptions are against such an imposition."

(d) *For greater reason, construction is against a tax upon a tax.*

Thus, in *Edwards* v. *Slocum*, 264 U. S. 61, 63, the Court said:

"The (government's) theory departs from the long established practice of the law not to regard the incidence of a tax in the levying of a tax."

In the same case, in 287 Fed. 651, 655 (C. C. A. 2), it was said:

"History, so far as we can discover, shows no other instance of attempting to measure a tax *pro tanto* by itself. As Hand, J., said in the court below, this theory

departs from long established practice, and from the usage, if not the law, of never regarding the incidence of a tax in the levying of a tax."

To the same effect are the following cases:

Clark v. *United States*, 27 Fed. (2d) 887, 888 (D. C., Mass.);

Old Colony Trust Co. v. *Malley*, 15 Fed. (2d) 105, 106 (D. C., Mass.); and

Nichols v. *Leach*, 50 Fed. (2d) 787, 792 (C. C. A. 1).

In the light of the foregoing fundamental principles of statutory construction to which the courts have always adhered, we cannot conceive that this Court will adopt the construction of Section 807 urged by petitioner.

It is evident that if Section 807 be read, and its words be given their usual and ordinary meaning, the section can have no application to this estate. The sole purpose of the petitioner in seeking to obtain judicial approval for his construction of Section 807 is to impose a larger Federal estate tax upon Mr. Wolf's net estate. The only result of this construction would be to greatly diminish the shares of the residuary charitable legatees and to transfer that amount to the Treasury of the United States. If, to all of this, we add the further considerations that the Commissioner's construction (a) results in the imposition of a tax upon a tax (which, being utterly unsound, has never been approved and has been often condemned by the courts) and (b) in order to compute the tax upon a tax where there is a residuary gift to charities and the amount of the charitable deductions and the amount of the tax are necessarily unknown, resort must be had to an algebraic or complicated arithmetical formula in the computation of the tax, it becomes an indisputable fact, we submit, that every intendment is against that construction.

It seems impossible to reconcile the Commissioner's construction of Section 807 with the express declaration of

the courts that statutes furthering the encouragement of bequests for purposes which tend toward the public good are to *be liberally construed,* and that in such cases *exemption from taxation is not so much a matter of grace or favor as rather an act of public justice. Harrison* v. *Barker Annuity Fund,* 90 Fed. (2d) 286, 288 (C. C. A. 7). In this view, there is no valid or logical reason for this Court to adopt the construction urged by the petitioner.

Section 807 of the Revenue Act of 1932, If Construed as Petitioner Contends, Would Be Unconstitutional Because It Would Require (a) That the Incidence of the Tax Must Be Regarded in the Levying of the Tax, and (b) That the Amount of the Tax Be Measured by the Tax Itself, or in Other Words That a Tax Be Imposed Upon a Tax.

Respondents in their Complaint alleged that Section 807 of the Revenue Act of 1932, if and as applied by the Commissioner in determining the estate tax liability of this estate, is unconstitutional and void, and denies to respondents the due process guaranteed by the Fifth Amendment to the Constitution of the United States (Rec. 6). This allegation was denied by the petitioner in his Answer (Rec. 39). The constitutionality of Section 807 is therefore in issue in this case although the courts below, having found that Section 807 did not apply in the computation of Federal estate taxes on Mr. Wolf's estate, had no occasion to decide and did not decide whether Section 807 was or was not constitutional when applied to this estate.

Petitioner says (Br. 16):

> "But whatever may be said of the accuracy of respondents characterization of Section 807, it is clear that this case simply involves a charitable deduction which Congress could have denied altogether."

We do not dispute that it is within the power of the Congress to determine what are proper deductions in

the computation of taxes, or that it would be competent for Congress to limit deductions or to deny them altogether. We *do* insist, however, that where the intention of the Congress to permit deductions for bequests to charity has been clearly expressed in successive revenue acts, *the right to such deductions can only be abridged or limited by language as clear and unmistakable as the language originally granting such deductions*, and can not be limited or abridged by a construction of a statute which is contrary to accepted fundamental principles of taxation.

Viewed in this respect, Section 807 of the Revenue Act of 1932 is unconstitutional when applied to the residuary estate of a decedent bequeathed to charity for the following reasons: Federal estate taxes are determined by ascertaining the net estate of the decedent and applying the statutory rates of tax thereto. The net estate of the decedent is the amount transferred by reason of his death, less all proper credits and deductions. It follows that if Section 807 be given the construction which the Commissioner seeks to place upon it, the respondents, in computing the tax upon the estate of their decedent, would be required to ascertain the amount of the deductions on account of their decedent's residuary bequests to charity. Following the Commissioner's theory, the amount of such deductions would then have to be reduced by the ultimate amount of the Federal estate tax which the respondents are required to pay, which is, of course, unknown. Quite aside from the difficulties of computation where there are two mutually dependent, indeterminate amounts, (that is, the amount of the charitable deductions and the amount of the tax) it is clear that the effect of Section 807 is to add the amount of the tax to the otherwise taxable net estate and thereby to create a fictitious net estate, and to impose a tax upon the amount of the tax itself. If it be the intent of the Congress to limit or abridge charitable deductions, and the Congress,

in endeavoring to effect that intent, enacts a statute which imposes a tax upon a fictitious net estate by adding the amount of that tax to the otherwise taxable net estate, then we say that statute is unconstitutional.

We realize that Section 807 of the Revenue Act of 1932 has not heretofore been judicially construed except by the District Court and the Circuit Court of Appeals in the case at bar. Nevertheless the question of the right of the Congress to impose a tax upon a tax has been before the courts. This Court has said that it will settle this question whenever an attempt to impose a tax upon a tax is undertaken by the Treasury and the question is properly presented to the court.

> *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 730, 731.

In its consideration of this question, we again call the Court's attention to the opinion of Judge Hough sitting in the Circuit Court of Appeals for the Second Circuit in *Edwards* v. *Slocum*, 287 Fed. 651. In discussing the Government's contentions, Judge Hough said, at page 653:

> "It is urged insistently that, since the residuary charities will not get what the United States takes, and would get that much more if the United States took nothing, what they do not get must be taxable, and, since that which is taxable or measures tax is called 'net estate' by the statute, there it must go. Assuming this as truth, the tax layer perceives that the 'net estate,' which is practically synonymous with taxable estate, is to receive augmentation by an unknown amount, which renders its own figure unknown;"

Continuing his analysis, Judge Hough said, at pages 654 and 655:

> "It is next observable that this using of tax to measure tax will only happen when the residuary estate, or some part of it, is devoted to charity or other deductible purpose. If this testatrix had made

ber charitable bequests before inserting a residuary clause, no difficulty would have arisen. It is argued with apparent seriousness that this is 'something for which the testatrix is responsible,' which is true only if the law laid such a trap as this for charitable residuary legatees, as distinguished from equally charitable general legatees—again something not lightly imputable to the lawgiver. • • •

"The net estate resulting from the legal invention of using a tax to measure a tax does not respond to that concept; it is but a fiction, never to be found, except in a tax sheet. This is artificial, not real, and is to be avoided, if at all possible.

"Again, observing the language of the statute, it may be admitted that net estate is used but as a measure for tax, and is not itself taxed, for the impost is said to fall upon the entire property. This is mere matter of words; for practical purposes the net estate is the taxable estate. It is therefore a fundamental objection, not only as to the spirit but the letter of this act, *that the taxable estate is augmented by a deliberate and designed encroachment upon charities.*

"• • • History, so far as we can discover, shows no other instance of attempting to measure a tax *pro tanto* by itself. As Hand, J., said in the court below, this theory departs from long established practice, and from the usage, if not the law, of never regarding the incidence of a tax in the levying of a tax."

Judge Hough concludes with the observation that the scheme of taxation insisted on by the Government is unjust, opposed to long established practice and the spirit of the statute, and that it is not required by the language of the Act and tends only to bring confusion into the administration of the tax laws.

When the *Slocum* case ultimately reached this Court, the unanimous opinion of the Court affirming the decision of the Circuit Court of Appeals for the Second Circuit was delivered by Mr. Justice Holmes (264 U. S. 61). In this opinion, Mr. Justice Holmes first points out that the Federal estate tax is not a tax upon a

residue but is a tax *upon a transfer of his net estate by a decedent* and that the tax comes into existence before and is independent of the receipt of the property by the legatee. Continuing, Mr. Justice Holmes comes to the logical conclusion that *the net estate will be ascertained before the tax is computed.* Concluding he says, (p. 63):

> "As further remarked below the theory departs from the long established practice of the law not to regard the incidence of a tax in the levying of a tax *and the position of the Government is contrary to the expressed intent of the statute to encourage charitable bequests.*"

We submit that the principles enunciated both by Mr. Justice Holmes and by Judge Hough are as fundamentally sound today as they were when first promulgated, and that if Congress by its enactment of Section 807 has intended to abrogate those principles, then such act is unconstitutional. Much of what was said by Judge Hough and Mr. Justice Holmes in the *Slocum* case is equally pertinent to our discussion, *infra* pp. 36-38, of the Commissioner's computation of the tax.

It seems plain beyond peradventure that when applied to the residuary estate bequeathed to charities by an Illinois decedent, the application of Section 807 results in the imposition of a tax by a deliberate encroachment upon the rights of the residuary charitable legatees.*

---

* It will be noted that in discussing the right to impose a tax upon a tax the courts also discuss the right to employ an algebraic formula in the computation of the tax. It would seem that a system of taxation which requires the use of an algebraic or complicated arithmetical formula to compute the tax may be an additional reason why a statute imposing a tax upon a tax would be unconstitutional.

If Section 807 of the Revenue Act of 1932 Is Held to Apply to This Estate and to Be Constitutional, the Commissioner of Internal Revenue Is Not Entitled to Use an Algebraic or Complicated Arithmetical Formula to Compute the Amount of the Federal Estate Taxes on This Estate.

It is alleged in the respondents' Complaint (Rec. 4) and in their reply (Rec. 43) that the Commissioner calculated the amount of Federal estate tax on this estate by algebraic formula.

Respondents' Computation.*

Respondents maintain that the Federal estate tax on Mr. Wolf's estate is $342,744.60. This tax is computed exactly as in *Edwards* v. *Slocum*, as follows (Rec. 80-81):

Gross estate			$4,238,805.97
Deductions:			
(1) Debts, etc.	$ 283,810.44		
(2) Charitable, etc. legacies other than residual	1,570,696.74		
(3) Residuary for charity, etc.	463,103.08		
(4) Specific exemption under 1926 Act	100,000.00	2,417,610.26	
Net estate 1926 Act			$1,821,195.71
Gross estate			$4,238,805.97
Deductions:			
(1) Debts, etc.	$ 283,810.44		
(2) Charitable, etc. legacies other than residual	1,570,696.74		
(3) Residuary for charity etc.	463,103.08		
(4) Specific exemption under 1932 Act	50,000.00	2,367,610.26	
Net estate 1932 Act			$1,871,195.71
Federal Estate Tax on net taxable estate under 1926 and 1932 Acts as above			$ 342,744.60

* In the Federal estate tax return which the respondents filed for the estate of their decedent, respondents reported a tax of $436,744.65 (Rec. 196). This amount was paid by the respondents under protest to avoid having to pay interest on any deficiency. See testimony of Mary E. Kaufman (Rec. 113, 114).

In the *Slocum* case, the Executors, in their Federal estate tax return, reported as follows (287 Fed. 652):

Gross estate			$49,129,256.99
Deductions:			
(1)	Debts, etc.	$ 3,789,321.74	
(2)	Charitable, etc. legacies other than residual	1,285,000.00	
(3)	Residuary for charity, etc.	35,436,855.70	
(4)	Specific exemptions	50,000.00	40,561,177.44
	Net Estate		$ 8,568,079.55

and paid a Federal estate tax of $1,406,977.50 on the $8,568,079.55.

The above shows that what was offered for tax, that is, the "net estate," is exactly the aggregate of pecuniary bequests to other than charitable, etc. purposes, less the specific statutory exemption. Proper tax on this net figure was admitted to be $1,406,977.50. To this the Commissioner objected and restated the return by adopting all the Executors' figures except those for the "residuary for charity, etc." which he reduced from $35,436,855.70 to $33,610,506.75, thereby increasing the net estate by the amount of the reduction and, on investigation, this difference is found to be $1,826,348.95, which is the amount of the Federal estate tax on the net estate increased by the amount by which the Commissioner reduced the residuary charitable deductions.

This result, as Judge Hough said in the *Slocum* case (287 Fed. 652) "plainly involves paying an estate tax on the amount of the tax paid" which, as we have shown has been condemned both by the Circuit Court of Appeals for the Second Circuit and this Court (*supra*, pp. 38-40).

The Commissioner in the instant case reduces the

exemption for the residuary bequest to charities of $463,103.08 to $3,223.51 and adds the difference of $459,879.57 to the net estates.* The Federal estate tax on this augmented amount, when computed according to the Commissioner's method, is $459,879.57 (Rec. 74-78), which is exactly the amount by which the Commissioner has reduced the residuary charitable deductions claimed by respondents. The respondents computed Federal estate taxes on their decedent's estate precisely in the same manner as Federal estate taxes were computed in the *Slocum* case, which case respondents insist is controlling in the computation of Federal estate taxes on the estate of an Illinois decedent, and the Commissioner has done in the instant case exactly what he attempted to do in the *Slocum* case.

Commissioner's Computation.

The discrepancy between the respondents' computation and the Commissioner's computation arises because the Commissioner has added to the otherwise net taxable estate of the decedent the amount of the Federal estate tax as computed by him, and has then recomputed the tax upon the otherwise taxable net estate augmented by the amount of the tax.

It is apparent that the Commissioner in computing the tax in the amount of $459,879.57 on the basis of allowing as deductions for residuary bequests to charitable organizations only the sum of $3,223.51 was compelled to ascertain the amount of the allowable charitable deductions in order to compute the correct Federal estate tax, and simultaneously was required to determine the correct Federal estate tax in order to ascertain the allowable charitable deductions. This problem involving two indeterminate unknown factors mutually dependent can be solved by the

* The computation in Edwards vs. Slocum was made under the Revenue Act of 1918. The tax in the case at bar must be computed under both the Revenue Act of 1926 and the Revenue Act of 1932.

application of the principles of algebra, but petitioner, while insisting that the Commissioner has the right to compute Federal estate taxes by means of algebra, denies that the tax was so computed in the instant case. The reason for this denial is obvious. Even the Commissioner must realize what this Court had in mind when it said in the Slocum case, that "algebraic formulae are not lightly to be imputed to legislators."

There is nothing in the Constitutions of the United States, or any of the States or in the structure of the successive Revenue Acts which would justify the imposition of taxes by resort to the principles of algebra.

The fact of the matter is that the tax can only accurately be computed by means of an algebraic or complicated arithmetical formula and cannot be computed through any simple principles of arithmetic. No one is better aware of this than the Commissioner. There is no magic in the term "algebra." What we are here protesting is any computation which is so involved as to be beyond the comprehension of the ordinary taxpayer.

The tax might be approximated by trial and error, the number of trials depending upon where the person figuring the tax happens to start, but no one has ever contended that it would be proper or permissible to compute Federal estate taxes by trial and error.

The Commissioner's computations speak for themselves. We can only suggest that the Court read them Attempts to explain the Commissioner's computations only emphasize their complexity.

Be that as it may, Professor Graves testified on behalf of the respondents and it is not contradicted, that it is impossible to understand the Commissioner's computation without an understanding and knowledge of the principles of algebra. (Rec. 108-111.)

In order to analyze and discuss the Commissioner's com-

putation, it is necessary to adopt the terms *"true tax"* and *"trial tax"* used by the Commissioner and the petitioner. These terms, which have been coined by the Commissioner, are without meaning when applied to a tax statute unless the Commissioner is to be permitted to write his own dictionary.

There is no reference either in the statutes imposing a Federal estate tax or in the applicable regulations to such terms as *"trial tax"* and *"true tax."* Taxing statutes impose *"taxes"* and that is the only thing that properly concerns us.

It is quite true that once the trial tax has been computed by application of the principles of algebra, the determination of the true tax may be accomplished arithmetically by the application of the principles of percentage. It is not, however, possible to ascertain the trial tax as found by the Commissioner in the amount of $340,310.88 without the use of an algebraic formula, nor is it possible for the taxpayer to understand why the Commissioner's formula of $1-1\mid(.34-[.8\times.10])$ applied to the figure of $340,310.88 will produce the true tax, without an understanding of the principles of algebra.

We again emphasize that the Federal estate tax is imposed upon the *net estate* of the decedent. The net estate of this decedent under the 1926 Act is $1,821,195.71 and under the 1932 Act, $1,871,195.71. These amounts, however, are designated by the Commissioner in his computation as the *"trial net estates."* The Commissioner ascertains the trial tax by adding to the "trial net estates" an amount which is assumed to be the tax on the trial net estates, and then applies to this augmented amount the rates not on this net estate, but on an assumed net estate, which is in a higher bracket.

In his computation, the Commissioner has overstated the tax by applying a rate of 10 per cent under the 1926

Act and a rate of 34 per cent under the 1932 Act, such rates being applicable to net estates of more than two million dollars, when it is perfectly clear that unless the Federal estate tax ultimately to be paid is added to Mr. Wolf's net estate, his net estate does not exceed two million dollars, and the applicable rates are 9 per cent under the 1926 Act and 31 per cent under the 1932 Act. The Commissioner's computation involves the application of algebraic principles, but is without warrant in the computation of Federal estate taxes on this estate.

This Court, we submit, should put an end once and for all to the assessment of Federal estate taxes by complicated algebraic and arithmetical formulae, by *"trial taxes"* and *"true taxes."*

Conclusion.

The language of Section 807 is clear and unambiguous. It is applicable only in cases where Federal estate taxes are payable *out of* charitable bequests. Under the law of Illinois, Federal estate taxes are payable out of the general or gross estate of the decedent as an expense of administration and are not payable out of the decedent's residuary estate bequeathed to charity. The instant case, therefore, manifestly does not fall within the express words of the statute.

The judgment of the District Court and the Circuit Court of Appeals is correct and should, therefore, be affirmed.

Respectfully submitted,

ALEXANDER F. REICHMANN,
ANDREW J. DALLSTREAM,
Attorneys for Respondents.

HARRY B. HURD,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 103.—October Term, 1942.

Carter M. Harrison, Individually and as Collector of Internal Revenue, First Collection District of Illinois, Petitioner,

vs.

The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and Testament of Henry M. Wolf, Deceased.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 11, 1943.]

Mr. Justice Murphy delivered the opinion of the Court.

Respondents, the executors under the will of Henry M. Wolf, brought this action to recover an alleged overpayment of federal estate taxes. The case turns upon whether under the provisions of § 303(a) of the Revenue Act of 1926, as amended by § 807 of the Revenue Act of 1932,[1] the amount to be deducted from decedent's gross estate on account of the bequest of his residuary estate to charity is the actual amount of such bequest, after payment of federal estate taxes, or what would have been the amount if there had been no such taxes.

Testator, a resident of Illinois, bequeathed the residue of his estate to four named charitable organizations. The will contained no provision as to the payment of federal or state death taxes except for a direction that all inheritance, legacy, succession and estate taxes upon certain specific bequests to individuals

[1] Section 807 provides as follows:

Sections 303(a)(3) and 303(b)(3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows: "If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

It is now part of § 812(d) of the Internal Revenue Code.

should be paid out of the general estate. The residuary estate, after deducting funeral and administration expenses and specific bequests but not the federal estate tax, amounted to $463,103.08, all of which sum respondents claim they are entitled to deduct from the statutory gross estate in computing the federal estate tax. The Commissioner of Internal Revenue ruled, however, that only that portion of the residue which was actually distributable to the charitable donees, i. e., the amount remaining after payment of the federal estate tax, was deductible as a charitable bequest. He determined that the total estate tax amounted to $459,879.57, which would be paid out of the residuary estate, and that respondents were therefore entitled to deduct only $3,223.51, the amount actually passing under the residuary bequests.

Respondents paid the assessed tax under protest and filed a claim for refund which the Commissioner rejected. This suit followed, and the district court entered judgment for respondents. The Circuit Court of Appeals affirmed. 125 F. 2d 893. We granted certiorari because of the importance of the question in the administration of the federal estate tax system.

Section 807 recognizes that the ultimate thrust of the federal estate tax is to be determined by state law, cf. *Riggs* v. *Del Drago*, — U. S. —, (decided November 9, 1942), and provides that where the tax is, either under the will or the applicable local law, "*payable . . . out of* the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."[2] The court below fixed upon the words "payable out of" and held § 807 inapplicable because the federal estate tax was a charge against the entire estate and not against the residue under Illinois law,[3] and therefore was not "payable out of" the residuary bequest. The court then followed *Edwards* v. *Slocum*, 264 U. S. 61, where under substantially identical facts and in the absence of a statute such as § 807, the instant issue was resolved against the Government. In so doing the court below refused to examine the legislative history of § 807 on the ground that the section was unambiguous.

---

[2] Emphasis added.

[3] The cases of People v. Pasfield, 284 Ill. 450; People v. Northern Trust Co., 289 Ill. 475; and People v. McCormick, 327 Ill. 547, were cited for this proposition.

But words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on 'superficial examination'." *U. S.* v. *Amer. Trucking Ass'ns.*, 310 U. S. 534, 543-44. See also *United States* v. *Dickerson*, 310 U. S. 554, 562. So, accepting the Circuit Court's interpretation of Illinois law as to the incidence of the tax, we think it should have considered the legislative history of § 807 to determine in just what sense Congress used the words "payable out of". The committee reports on § 807 demonstrate that it was intended as "a legislative reversal of the decision" in *Edwards* v. *Slocum*, *supra* (H. Rep. No. 708, 72d Cong., 1st Sess., p. 50),[4] and that Congress used the words "payable out of" in the sense of "diminished or reduced by" the payment of the tax. Thus the House Report states:

"The purpose of this amendment is to limit the deduction for charitable bequests, etc., to the amount which the decedent has in fact and in law devised or bequeathed to charity. Under existing law no consideration can be given to any estate, succession, legacy, or inheritance taxes imposed with respect to a decedent's estate even though by the terms of his will or the local law they actually reduce the amount of such bequest or devise." p. 49.

And, in referring to the situation in *Edwards* v. *Slocum*, it was said:

"Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity." p. 50.

That is the case here for while the estate tax may be a charge against the entire estate under Illinois law, admittedly its payment will operate to reduce the amount of the residuary estate. This legislative history is conclusive in favor of the Government's contention that respondents are entitled to deduct only the amount of the residuary estate actually passing to the charitable beneficiaries after provision is made for the payment of the federal estate tax.

It is argued on behalf of respondents that this interpretation of § 807 results in a "tax upon a tax" and is therefore unconstitutional. We need not stop to consider the accuracy of this

[4] See also S. Rep. No. 398, 68th Cong., 1st Sess., p. 35, and H. Conference Rep. No. 844, 68th Cong., 1st Sess., pp. 25-26, with reference to § 303(a) of the Revenue Act of 1924 which contained the same sentence as § 807.

nomenclature because this case involves only a charitable deduction which Congress could have denied altogether, and the limitations placed upon that deduction by § 807 clearly do not go beyond the limits of permissible constitutional power. Respondents also object to the fact that the tax may have to be computed by an algebraic formula or by complicated arithmetical methods because of the two mutually dependent variables, the amount of the tax and the amount of the residue as reduced by the tax, and reference is made to the statements in *Edwards* v. *Slocum* that "algebraic formulae are not lightly to be imputed to legislators", 264 U. S. at 63. This contention loses all significance when it is remembered that § 807 was intended as a "legislative reversal" of *Edwards* v. *Slocum*. And compare *United States* v. *New York*, 315 U. S. 510.

The judgment is reversed and the cause remanded for further proceedings in conformity with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.